

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11112 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA @ HAKLO BHUPATRAI RATHOD

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner
Mr.P.K.Shukla AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/12/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner under Article 226 of the Constitution of India challenging his order of detention passed by the District Magistrate, Bhavnagar on 8.8.2000 in exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of

Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the aforesaid order from 9.8.2000.

#. The detaining authority took into consideration investigation of 3 criminal cases registered against the petitioner under sections 324,354,384,385, and 302 of IPC. The detaining authority also took into consideration the statements of 4 witnesses who on assurance of anonymity offered the statements against the petitioner to the extent that the petitioner was a head strong man and hardened criminal. The witnesses have also stated that the petitioner attempted to extract amount from the witnesses and on opposing the concerned witness was beaten by the petitioner by which public order was disrupted and due to fear of the petitioner nobody was prepared to file any complaint against him. From the above material, the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. P.S.Gondalia for Mr. Y.S.Lakhani for the petitioner and Mr. P.S.Shukla learned AGP for the respondents were heard.

#. It was mainly contended that further detention of the detenu is vitiated because the claim of the detaining authority under section 9(2) to keep the identity of the witness secret is not genuine. It was urged that there is no material on record by which the detaining authority could have reached to subjective satisfaction that fear or apprehension expressed by the witnesses were correct.

#. The case of the petitioner is clearly covered by a decision of this court in the case of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. reported in 1996(1) GLH 300. In this case this Court relied upon the following observations of a bench decision in the case of Koli Ashwin vs. State of Gujarat in Special Cri.Application No. 1812 of 1993:

"However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn

to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

In the case of Jakirbhai Rahimbhai (Supra) this Court observed that there was no material on record by which the detaining authority could come to subjective satisfaction that the fear or apprehension expressed by the witnesses were correct. The detention of the detenu in that case was vitiated because non disclosure of the names and identity of the witnesses would jeopardise the right of the petitioner under Article 22(5) of the Constitution of India.

#. When we turn to the facts of this case we find that the statements of the witnesses in question are recorded by PI, Bhavnagar A Division Police Station. In turn the statements are verified by the Sub Divisional Police Officer, Bhavnagar before whom the witnesses stated to the extent that their statements before the PI, Bhavnagar A Division Police Station were correct. Below this statement the detaining authority merely put an endorsement "verified the contents" and signed the endorsement. From the above facts it clearly emerges that the Sub Divisional Police Officer who verified the statements did not satisfy himself that the fear or apprehension expressed by the witnesses against the petitioner was correct. He recorded the statement to the extent only that whatever was stated in the statements did not satisfy before the PI, Bhavnagar A Division Police Station was correct; while the detaining authority put the above endorsement and signed. This could not be said to be sufficient material or contemporaneous record to each to a subjective satisfaction that the fear or apprehension expressed by the witnesses were correct. From this material only the detaining authority has claimed privilege under section 9(2) of the PASA Act. Therefore, it clearly emerges that the claim of the detaining authority of the privilege is not genuine because there is no material to indicate that the detaining authority himself reached to subjective satisfaction from either calling the witnesses personally or from the contemporaneous record available to him. Further the detention of the detenu therefore, will have to be held vitiated on the ground that the right of the petitioner to make effective representation as guaranteed under Article 22(5) of the Constitution of India is

jeopardised. For these reasons the order of detention passed by the detaining authority regarding the detention of the petitioner is required to be set aside and quashed.

#. For the aforesaid reasons the order passed by the District Magistrate, Bhavnagar on 8.8.2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. The petitioner Mahendra @ Haklo Bhupatrai Rathod is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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